

By: Keel

H.B. No. 47

A BILL TO BE ENTITLED

AN ACT

1
2 relating to imposing a civil penalty on a clerk who fails to make
3 available to the public certain information with respect to an
4 arrest or search warrant.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 15.26, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 15.26. AUTHORITY TO ARREST MUST BE MADE KNOWN. (a) In
9 executing a warrant of arrest, it shall always be made known to the
10 accused under what authority the arrest is made. The warrant shall
11 be executed by the arrest of the defendant. The officer need not
12 have the warrant in his possession at the time of the arrest,
13 provided the warrant was issued under the provisions of this Code,
14 but upon request he shall show the warrant to the defendant as soon
15 as possible. If the officer does not have the warrant in his
16 possession at the time of arrest he shall then inform the defendant
17 of the offense charged and of the fact that a warrant has been
18 issued.

19 (b) The arrest warrant, and any affidavit presented to the
20 magistrate in support of the issuance of the warrant, is public
21 information, and beginning immediately when the warrant is executed
22 the magistrate's clerk shall make a copy of the warrant and the
23 affidavit available for public inspection in the clerk's office
24 during normal business hours. A person may request the clerk to

1 provide copies of the warrant and affidavit on payment of the cost
2 of providing the copies. If the clerk fails to make a copy of the
3 warrant and the affidavit available as required by this subsection,
4 the clerk is liable to the state for a civil penalty in the amount of
5 \$1,000 for each violation. The attorney general may sue to collect
6 a civil penalty under this subsection. A civil penalty collected
7 under this subsection shall be deposited in the state treasury to
8 the credit of the general revenue fund.

9 SECTION 2. Article 18.01(b), Code of Criminal Procedure, is
10 amended to read as follows:

11 (b) No search warrant shall issue for any purpose in this
12 state unless sufficient facts are first presented to satisfy the
13 issuing magistrate that probable cause does in fact exist for its
14 issuance. A sworn affidavit setting forth substantial facts
15 establishing probable cause shall be filed in every instance in
16 which a search warrant is requested. The affidavit is public
17 information if executed, and the magistrate's clerk shall make a
18 copy of the affidavit available for public inspection in the
19 clerk's office during normal business hours. If the clerk fails to
20 make a copy of the affidavit available as required by this
21 subsection, the clerk is liable to the state for a civil penalty in
22 the amount of \$1,000 for each violation. The attorney general may
23 sue to collect a civil penalty under this subsection. A civil
24 penalty collected under this subsection shall be deposited in the
25 state treasury to the credit of the general revenue fund.

26 SECTION 3. The change in law made by this Act applies only
27 to an arrest or search warrant that is issued on or after the

1 effective date of this Act.

2 SECTION 4. This Act takes effect September 1, 2005.